

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

RONALD R. SMITH, JR.,)	
)	
Petitioner,)	
)	
vs.)	Case No. 4:09CV1227 HEA
)	
TROY STEELE,)	
)	
Respondent.)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on Petitioner's Motion for Relief from Judgment, [Doc. No. 52]. Petitioner seeks relief from this Court's Judgment denying his Habeas Corpus Petition based on the Court's Opinion, Memorandum and Order both of which were entered on June 25, 2012. Petitioner filed his Notice of Appeal on July 12, 2012, however, he subsequently filed this Motion on October 31, 2012 and asked the Eighth Circuit to stay consideration of his Application for Certificate of Appealability pending a ruling by this Court of his Motion for Relief.

Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, a district court can take action despite the fact that an appeal is pending. The district court retains jurisdiction to "relieve a party. . .from a final judgment, order, or

proceeding for the following reasons set out by Petitioner for relief:

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or

(6) any other reason justifying relief from the operation of the judgment.

Petitioner claims for the first time that the relevance of a transcript he requested regarding his request for a continuance in his State proceedings establish that he would not have asked for a continuance but for the fact that the State offered him a nineteen and one half year “deal” on his Dent County case; that, but for this “deal” he would not have asked for a continuance. This claim, however, was never presented in any previous pleadings. It was not raised in Petitioner’s State proceedings, nor was it raised in this habeas proceeding before Judge Noce and this Court. Petitioner’s belated attempt to establish the prejudice factor of a speedy trial challenge fails. As Judge Noce observed that the Missouri Court of Appeals noted, Petitioner offered no evidence of oppressive pretrial incarceration, anxiety or concern, or that his defense was impaired by the delay.

Although Petitioner states that the transcripts he did not receive will show that he would never have asked for a continuance had it not been for the 19 ½ deal


Petitioner's late attempt to establish the prejudice factor is not supported by his previous filings. Indeed, in his Amended Petition, Petitioner states that the plea negotiations failed.

Petitioner has failed to establish any grounds for the Court to essentially reconsider its Judgment based on Judge Noce's Report and Recommendation. As such, the Motion for Relief from Judgment will be denied.

Accordingly,

IT IS HEREBY ORDERED that Petitioner's Motion for Relief from Judgment, [Doc. No. 52], is denied.

Dated this 11th day of January, 2013.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE